



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/169981

PRELIMINARY RECITALS

Pursuant to a petition filed November 06, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on January 12, 2016, at Milwaukee, Wisconsin.

This case was previously scheduled for a hearing on December 2, 2015. The hearing was rescheduled at the petitioner's request to January 12, 2016.

The issue for determination is whether the agency correctly denied the petitioner's application for BadgerCare (BC) Plus benefits because she failed to provide the requested verification.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

■
■

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On August 26, 2015 the petitioner applied for BadgerCare (BC) Plus benefits with a one month back date. The petitioner also applied for FoodShare (FS) and family planning only benefits. The FS and family planning only denials were appealed, and are discussed in separate decisions.
3. On September 11, 2015 the agency sent the petitioner a request for verification of employment and education aid.
4. The petitioner completed her application interview on September 21, 2015.
5. As of September 22, 2015 the agency had still not received verification from the petitioner. The agency sent the petitioner another request for verification.
6. On September 28, 2015 the agency mailed the petitioner a notice stating that her application for BC Plus benefits had been denied for failing to provide the required verification.
7. On November 9, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
8. On November 23, 2015 the petitioner contacted the agency. The agency told the petitioner to submit her verification. On November 27, 2015 the petitioner submitted the majority of the requested verification. The only missing item was employment verification from Jimmy Johns. The agency never told the petitioner to reapply for BC Plus benefits.
9. The petitioner is currently pregnant.

DISCUSSION

An MA recipient is required to verify information that can affect eligibility. Wis. Admin. Code, §DHS 102.03. If the household fails to verify required information by the time limit, the agency may deny the benefits. Wis. Admin. Code, §DHS 102.03(1). The agency should assist the applicant if she requests assistance. BC+ Handbook, App. 9.8. If sources of verification are unavailable, the agency should use the best information available. Id.

The Handbook, App. 9.11.4, provides as follows:

Deny or reduce benefits when all of the following are true:

1. The member has the power to produce the verification.
2. The time allowed to produce the verification has passed.
3. The member has been given adequate notice of the verification required.

You need the requested verification to determine current eligibility. Do not deny current eligibility because a member does not verify some past circumstance not affecting current eligibility.

In this case the agency sent the petitioner a request for verification. The petitioner did not provide the required verification until after the due date, and the agency denied the petitioner's application for BC Plus benefits. The petitioner argues that the reason she did not timely provide verification was because during her September 21, 2015 FoodShare (FS) interview, the agency worker told her that she would have until October 12, 2015 to provide verification. The verification applied to both the FS and BC Plus benefits. The worker told her that the agency would mail her a new verification request with the new due date. The agency mailed the petitioner a new verification request on September 22, 2015. This new request had a much earlier due date. The petitioner did not provide the requested verification, and the agency mailed her another notice on September 28, 2015 stating that her application for BC Plus benefits had been denied.

The agency's actions through September 28, 2015 are correct. Even if the agency worker discussed an October 12, 2015 due date, the agency worker sent another notice after that discussion with a different due date. This new notice supersedes the discussion, and is controlling. I further note that the petitioner did not provide verification prior to her referenced October 12 due date. She indicates that she received the denial, and instead decided to appeal. However, this is somewhat suspect as the Division of Hearings and Appeals did not receive the petitioner's Request for Fair Hearing until November 9, 2015.

The petitioner's first contact with the agency following their denial of her application for BC Plus benefits was on November 23, 2015. At that time the petitioner inquired about providing verification. The agency told her to submit the verification. The petitioner followed through and submitted nearly all of the required verification on November 27, 2015. She was missing one employment verification form, but otherwise her verification was complete.

The issue here is that the agency misinformed the petitioner. Her application was closed. She did not need to submit verification, rather she needed to reapply for BC Plus benefits. At this point the petitioner is pregnant and is seeking pre-natal care. The handbook directs the following:

Encourage anyone who expresses interest in applying to file an application as soon as possible.
When an application is requested:

1. Suggest the applicant use the ACCESS online application at the following site
<https://access.wisconsin.gov/access/> ; or
2. Mail the paper application form; or
3. Schedule a telephone or face-to-face interview.

BC+ Handbook, App. 25.1. The agency should have told her to reapply for BC Plus benefits with a three month backdate. A three month backdate from November would have made the petitioner eligible for BC Plus benefits effective August 1, 2015. Instead, the petitioner learns that she needs to reapply a month and a half later at the hearing. This is unacceptable.

CONCLUSIONS OF LAW

Although the agency correctly denied the petitioner's August 26, 2015 application for BC Plus benefits, the agency incorrectly denied the petitioner an opportunity to reapply for the BC Plus benefits on November 23, 2015.

THEREFORE, it is

ORDERED

That this case is remanded back to the agency with instructions to allow the petitioner to reapply for BC Plus benefits with an application date of November 23, 2015. She is eligible for a three month back date from the November 23, 2015 application date. The agency shall comply with this order within 10 days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 27th day of January, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 27, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability